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10 ATTORNEYS FOR PLAINTIFF

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ALASKA

14 U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
15 Plaintiff, )  
16 v. )  
17 CLUB DEMONSTRATION )  
SERVICES, INC., )  
18 Defendant. ) Case No.  
19 \_\_\_\_\_)

20 **COMPLAINT  
AND JURY DEMAND**

21 (Title I of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12111–12117)

23 **NATURE OF THE ACTION**

24 This is an action under Title I of the Americans with Disabilities Act, as amended,

1 42 U.S.C. § 12101 *et seq.* (“ADA”), and Title I of the Civil Rights Act of 1991, Pub. L.  
2 102-166, to correct unlawful employment practices on the basis of disability and to  
3 provide appropriate relief to Terry Baker, who is adversely affected by such practices.  
4 Plaintiff, the United States Equal Employment Opportunity Commission (“EEOC”)  
5 alleges that Defendant, Club Demonstration Services, Inc. (“Defendant”), violated the  
6 ADA when CDS: (1) did not make reasonable accommodations to the known physical  
7 limitations of Baker, an otherwise qualified individual with a disability, and  
8 (2) constructively discharged Baker from her employment on the basis of her disability.

9 JURISDICTION AND VENUE

10 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,  
11 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a)  
12 of the ADA, as amended, 42 U.S.C. § 12117(a), which incorporates by reference Sections  
13 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended,  
14 42 U.S.C. § 2000e-5(f)(1), (3); and Section 102 of the Civil Rights Act of 1991, 42  
15 U.S.C. § 1981a.

16 2. The employment practices alleged to be unlawful were committed within  
17 the jurisdiction of the United States District Court for the District of Alaska.

18 PARTIES

19 3. Plaintiff, the United States Equal Employment Opportunity Commission, is  
20 the agency of the United States of America charged with the administration,  
21 interpretation and enforcement of Title I of the ADA, and is expressly authorized to bring  
22 this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by  
23 reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1), (3).

24 4. At all relevant times, Defendant, Club Demonstration Services, Inc., has

1 been a Connecticut corporation employing more than 500 employees in each of twenty  
2 (20) or more weeks in 2017, registered with the State of Alaska, and doing business in the  
3 City and Borough of Juneau, Alaska.

4       5. At all relevant times, Defendant has continuously been an employer  
5 engaged in an industry affecting commerce under Sections 101(2) of the ADA, 42 U.S.C.  
6 § 12111(2), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by  
7 reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g)-(h).

8       6. At all relevant times, Defendant has been a covered entity under Section  
9 101(2) of the ADA, 42 U.S.C. § 12111(2).

## **ADMINISTRATIVE PROCEDURES**

11       7. More than thirty (30) days prior to the institution of this lawsuit, Baker filed  
12 a charge of discrimination with the EEOC alleging that Defendant denied her reasonable  
13 accommodation of her disability and constructively discharged her on the basis of  
14 disability, in violation of the ADA.

15        8. By letter dated December 20, 2018, the EEOC issued to Defendant a  
16 determination finding, *inter alia*, that Defendant denied Baker reasonable  
17 accommodation of her disability and constructively discharged her on the basis of  
18 disability, in violation of the ADA, and invited Defendant to join with the EEOC in  
19 informal methods of conciliation to endeavor to eliminate the discriminatory practices  
20 and provide appropriate relief.

21       9.      The EEOC engaged in communications with Defendant to provide  
22 Defendant the opportunity to remedy the discriminatory practices described in the  
23 Determination.

10. The EEOC was unable to secure from Defendant a conciliation agreement

acceptable to the EEOC.

11. By letter dated March 18, 2019, the EEOC issued to Defendant a Notice of Failure of Conciliation, notifying Defendant of the EEOC's determination that efforts to conciliate Baker's charge had been unsuccessful and that further conciliation efforts would be futile or non-productive.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

## STATEMENT OF CLAIMS

13. Since at least June 14, 2017, Defendant has engaged in unlawful employment practices in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a). Defendant discriminated against Baker when it did not make reasonable accommodation to her known physical limitations and when it constructively discharged her from her employment on the basis of disability, in violation of Section 102(a) of the ADA.

14. Baker is a qualified individual with a disability who, under Sections 3 and 101(8) of the ADA, 42 U.S.C. §§ 12102, 12111(8), can perform the essential functions of Defendant's position of part time sales advisor with reasonable accommodation:

a. Since 2015, when a nerve was severed during surgery for spinal stenosis, Baker has had neurogenic bladder and history of cauda equina syndrome, which cause urinary incontinence. These conditions substantially limited the operation of Baker's major bodily function of bladder function, and substantially limited the major life activities of standing, walking, and riding transportation.

b. Due the resulting urinary incontinence, Baker had to make frequent

1           use of the restroom to empty her bladder and/or change into a clean pair of  
2           diapers.

3           c.       Baker was qualified for the part time sales advisor position, as  
4           demonstrated by CDS's continued employment of her from May 2016 until  
5           September 2017.

6           d.       The essential job functions of a part time sales advisor employed by  
7           CDS are to demonstrate and explain products to members of Costco  
8           Warehouse Corporation ("Costco"), answer Costco member questions  
9           about the products, and to prepare, transport, and clean the carts used for  
10          the demonstrations.

11          e.       Baker was and is able to perform these essential job functions with  
12          the reasonable accommodation of bathroom breaks as needed.

13          15.      Baker began working for Defendant on or about May 6, 2016 at Costco  
14          Warehouse 107 in Juneau, Alaska.

15          16.      From May 2016 until approximately June 2017, Baker took bathroom  
16          breaks as needed to use the toilet and/or change into a clean pair of diapers due to the  
17          urinary incontinence caused by her condition of neurogenic bladder and cauda equina  
18          syndrome.

19          17.      In or around June 2017, Baker's manager informed Baker and her co-  
20          workers that they were no longer permitted to use the bathroom other than during their  
21          lunch break or their scheduled 15-minute break.

22          18.      On or shortly after June 6, 2017, Baker submitted a doctor's note to  
23          Defendant requesting that Baker be allowed to use the restroom as much as needed due to  
24          a medical condition.

1       19. On or about June 14, 2017, the doctor's note was routed to Defendant's  
2 Human Resources Generalist ("HRG") for the North West – Alaska region.

3       20. Later that same day, the HRG wrote a letter to Baker, stating that that  
4 Defendant was "unable to provide [her] with an accommodation at this time because it  
5 would pose an undue hardship to the company and/or necessitate the elimination of  
6 essential job functions of [her] position."

7       21. Defendant did not engage in an interactive process with Baker or propose  
8 an alternative accommodation before issuing this letter denying her request for  
9 accommodation.

10       22. Taking bathroom breaks as she needed to due to her disability would not  
11 have prevented Baker from fulfilling the essential functions of her job. A bathroom  
12 break takes only a few minutes including the time to secure her demonstration, so even a  
13 number of such breaks per shift would not have prevented Baker from promoting and  
14 explaining products to Costco members, answering their questions, and preparing,  
15 transporting, or cleaning her demonstration cart. This is demonstrated by, among other  
16 things, Baker satisfactorily fulfilling her duties from May 2016 until her manager  
17 implemented the bathroom policy in or around June 2017.

18       23. Because Defendant did not make reasonable accommodation to Baker's  
19 disability, Baker was forced to wear multiple diapers at a time to avoid leaking urine on  
20 the floor when she wet herself, and even then, on occasion, her diapers became so  
21 saturated that urine leaked, but she could not change them until a scheduled break. In  
22 addition, Baker would not drink anything during her shift to avoid exacerbating the  
23 problem, against her doctor's advice to drink water regularly.

24       24. It was physically uncomfortable and deeply humiliating to Baker to be

1 forced to work in wet diapers.

2       25. On or about July 8, 2017, Baker complained to Defendant that her request  
3 for accommodation had been denied.

4       26. Baker's complaint was routed to the same Human Resources Generalist that  
5 had denied her request for accommodation.

6       27. On or about July 10, 2017, in anticipation of a procedure that she hoped  
7 would enable her to self-catheterize, Baker inquired with the HRG about the possibility  
8 of bathroom breaks every two (2) hours, which might lessen the physical discomfort and  
9 humiliation she had to endure until she was able to self-catheterize.

10      28. On or about July 11, 2017, Defendant's HRG verbally reiterated to Baker  
11 that she would not be accommodated.

12      29. On or about July 14, 2017, Baker nonetheless submitted a doctor's note  
13 requesting bathroom breaks every two (2) hours, which specifically noted that she had an  
14 upcoming appointment that might result in a decrease in the frequency with which she  
15 would need to use the bathroom, a reference to the possibility that Baker might soon be  
16 able to self-catheterize.

17      30. On or about July 27, 2017, Defendant's HRG informed Baker in writing  
18 that Defendant would not accommodate her.

19      31. Nonetheless, in or around August 2017, in anticipation of being able self-  
20 catheterize, Baker worked with her manager such that her manager would give Baker the  
21 first break available, which gave her a break approximately every two hours and lessen  
22 the physical discomfort and humiliation she had to endure until she was able to self-  
23 catheterize.

24      32. Baker's manager knew that this arrangement was ineffective in preventing

1 Baker from wetting herself, and nonetheless did not give her permission to take  
2 additional bathroom breaks.

3       33. Over time, Baker's manager increasingly failed to provide even this  
4 informal arrangement, failing to give Baker the first break available which forced Baker  
5 to work longer than two hours between bathroom breaks.

6       34. Baker was not able to self-catheterize as soon as she had expected, and  
7 she had no choice but to keep wearing diapers and continue to wet herself at work  
8 through September 2017.

9       35. Due to the multiple written denials she received from Defendant's HRG,  
10 Baker knew that it would be futile to again request a reasonable accommodation of  
11 bathroom breaks as needed.

12       36. Baker had competently, diligently, and reasonably sought reasonable  
13 accommodation of her disability for over three (3) months, all while continuing to fulfill  
14 her job duties despite the extraordinary and egregious circumstances of being forced to  
15 work through the physical discomfort and deep humiliation of wearing urine-soaked  
16 diapers.

17       37. By September 19, 2017, Baker could no longer endure these extraordinary  
18 and egregious working conditions.

19       38. On or about September 20, 2017, Baker submitted a doctor's note to  
20 Defendant stating that Baker could not continue working for Defendant without more  
21 frequent restroom breaks.

22       39. At the time she submitted this note, Defendant did not inform Baker that  
23 she could request medical leave in lieu of discharge.

24       40. Defendant terminated Baker's employment effective September 24, 2017.

1       41. On or about September 28, 2017, Baker recalled that Defendant had  
2 previously informed her that she may be eligible for medical leave, and she contacted  
3 Defendant's HRG and other managers to inquire as to whether she could apply for  
4 medical leave.

5       42. Defendant's HRG informed the other managers that Defendant would not  
6 allow Baker to apply for medical leave in lieu of her discharge, but Defendant never  
7 informed Baker of its decision.

8       43. Since at least June 14, 2017, and continuing until Baker's termination,  
9 Defendant did not make reasonable accommodation to Baker's disability in violation of  
10 Sections 102(a) and (b)(5)(A) of Title I of the ADA, 42 U.S.C. § 12112(a), (b)(5)(A).

11           44. On or about September 24, 2017, Defendant constructively terminated  
12 Baker in violation of Sections 102(a) and 102(b)(5)(B) of Title I of the ADA, 42 U.S.C.  
13 §§ 12112(a), (b)(5)(B).

14        45. The effect of the practices complained of in paragraphs 13 through 44  
15 above has been to deprive Baker of equal employment opportunities and otherwise  
16 adversely affect her status as an employee because of her disability.

17        46. The unlawful employment practices complained of in paragraphs 13  
18 through 44 above were intentional.

19       47. The unlawful employment practices complained of in paragraphs 13  
20 through 44 above were committed with malice or with reckless indifference to Baker's  
21 federally protected rights.

## PRAYER FOR RELIEF

Wherefore, the EEOC respectfully requests that this Court:

24 A. Grant a permanent injunction enjoining Defendant, its officers, servants,

1 employees, attorneys, all persons in active concert or participation with it, and successors,  
2 from engaging in any employment practice that discriminates based on disability.

3       B.     Order Defendant to institute and carry out policies, practices, and programs  
4 which provide equal employment opportunities for qualified individuals with disabilities,  
5 and which eradicate the effects of its past and present unlawful employment practices.

6       C.     Order Defendant to make Baker whole by providing appropriate back pay  
7 with prejudgment interest, in amounts to be determined at trial, and other affirmative  
8 relief necessary to eradicate the effects of its unlawful employment practices described in  
9 in paragraphs 13 through 47 above, including reinstatement of Baker with the reasonable  
10 accommodation of bathroom breaks as needed.

11      D.     Order Defendant to make Baker whole by providing compensation for past  
12 and future pecuniary losses resulting from the unlawful employment practices described  
13 in paragraphs 13 through 47 above, in amounts to be determined at trial.

14      E.     Order Defendant to make Baker whole by providing compensation for past  
15 and future non-pecuniary losses resulting from the unlawful employment practices  
16 described in paragraphs 13 through 47 above, including emotional pain, suffering,  
17 inconvenience, mental anguish, and other nonpecuniary losses, in amounts to be  
18 determined at trial.

19      F.     Order Defendant to pay punitive damages for its malicious and reckless  
20 conduct, as described in paragraphs 13 through 47 above, in amounts to be determined at  
21 trial.

22      G.     Grant such further relief as the Court deems necessary and proper to the  
23 public interest.

24      H.     Award the EEOC its costs of this action.

## JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by this Complaint.

DATED May 8, 2019.

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